

the belsunce case | judgment, uptake, genre

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— 1.

The following reads Lyotard in relation to the coverage of a controversial homicide case begun in Argentina in 2002.¹ Rather than taking up Lyotard explicitly in terms of aesthetics,² I try to show how Lyotard matters in relation to genre, reading *The Différend* as a highly productive but self-limiting contribution to genre theory.

Through application to a concrete case, I hope to show that although Lyotard is right about the stakes of genre, his philosophy of phrases is constitutively unable to demonstrate this. While Lyotard is certainly correct about the lack of a universal rule of judgment among or between heterogeneous genres,³ his dogged antihumanist program⁴ means that Lyotard can neither envisage the displacement of the victim, nor countenance the possibility that generic translation might sometimes occur.

Lyotard's purging of the metaphysics of the subject⁵ comes at a price—his concern to escape the 'mastery of the subject'⁶ means that generic translation is something to which Lyotard is unable to speak. I will argue, however, that generic translation can indeed occur and that when it does, it occasions particular social effects.

In both its rhetoric and its focus on the 'injustice of universal judgment', Carroll's characterisation typifies how *The Différend* has been taken up:

Le différend has as its critical-political goal the uncovering of differends there where they have been repressed or supposedly resolved; it argues for the necessity of listening to the idiom not given its day in court, to the silence imposed on the victims of oppression and

injustice. It attacks all mechanisms of repression, all courts, institutions, systems of thought that perpetuate the injustice of universal judgment and thus do not recognize the silence imposed on their victims. Its goal, however, is not to reverse the injustice and replace the acceptable idiom with the silenced one, thus paving the way for future injustice, but rather to formulate a political strategy and to practice a justice in terms of the nonresolution of differends. Phrasing the political for Lyotard is first of all to make it possible to phrase the differend, to phrase that which 'reality' and a politics rooted in it have not allowed to be phrased, what political theory has always attempted to suppress or resolve as quickly and with as little effort and effects as possible.⁷

Such a project, however, cannot get off the ground as long as Lyotard assumes an antihumanist stance and affirms the absolute untranslatability of genres of discourse.

The following signals what a 'phrasing of the differend' might in fact look like, and maintains that any such phrasing entrains two coextensive claims—first, a postulate of purposive agents not entirely constrained or spoken⁸ by any particular genre and second, an admission of degrees of generic translatability.

To do so, I will evoke a rhetorical take on genre, positing generically emergent but intergenerically subsistent agents constituted by neither one genre nor one epistemic frame, nonsovereign but purposive subjects neither fully formed nor fully dissolved—a rhetorical postulate of genre, in other words, affording a way to account for generic translation and its social effects.

— 2.

As far as accidents go, it was both banal and tragic. Fifty-year-old sociologist María Marta García Belsunce and her well-connected husband, Carlos Carrascosa, lived close to their relatives in the exclusive gated community of Carmel Country, Pilar, Provincia de Buenos Aires, Argentina. One rainy October afternoon, masseuse Beatriz Michelini arrived at the luxurious Belsunce residence to administer María's weekly massage only to be met by Carrascosa's shouting through a window that an accident had occurred. His wife, he claimed, had slipped and knocked her head while drawing a bath that afternoon. He had allegedly found her some time later, a lifeless body slumped on the floor. This accident of 27 October 2002 took a surprising turn, however, when an autopsy revealed that, rather than a bathroom tap, María Marta's head had in fact met with five bullets discharged from a .32 calibre revolver. The resultant judicial and journalistic frenzy became known as the *caso Belsunce* which was covered in terms of a murder mystery.⁹ 'Caught up in a judicial tangle and bordering on impunity', the case is presently open and is likely to remain unsolved.¹⁰

The *caso Belsunce* is one of a series of performances of law which have made for compelling viewing in Argentina recently.¹¹ Reading this juridico-journalistic event in terms of rhetoric and genre allows us to ask what sociodiscursive work is done by this trial and its reporting—might it articulate a structure of feeling¹² at work in Argentina today? What is achieved by describing the case in terms of a murder mystery? What adjudicatory roles are assumed by the retelling of the trial in the press? And beyond the question of *whodunit*, might the case say something about the intrications of judgment and genre?

— 3.

For Hariman, the ‘popular trial’ is ‘a genre of public discourse’, rhetorically charged and highly mediated.¹³ As a ‘genre of the literature of public life’¹⁴ it forms part, for Hariman, of what Burke calls ‘literature as equipment for living’.¹⁵ In the following we retain this instrumental characterisation of text and align it with our understanding of genre as ‘an intrication of text and context’.¹⁶

This capacious take on genre, in turn, can be used in relation to Lyotard’s notion of the *différend*. For Lyotard, a *différend* arises because we lack ‘a universal rule of judgment between heterogeneous genres’—‘as distinguished from a litigation, a *différend* would be a case of conflict, between (at least) two parties, that cannot be equitably resolved for lack of a rule of judgment applicable to both arguments’.¹⁷

We recall here the deep continuities between the disciplines of law and rhetoric. First evidenced in the work of the logographers, the coimbrication of law and rhetoric was insisted upon by Aristotle, Cicero and Quintilian, for example, and is apparent today in the rhetorical focus of much legal studies work,¹⁸ or when sociolegal research takes ‘discourse’ as its object of analysis,¹⁹ or in reductions of all disputation to *legal* dispute.²⁰ In this context, it is interesting to note Lyotard’s frequent recourse to figures of the forensic when talking of those instances of the inarticulable, those concerns unable to be heard which invite talk of the *différend*. These figures of the forensic (the plaintiff, the plea, the judge, the tribunal) effect a slippage between adjudication and judgment more generally, such that, rhetorically, legal topoi predominate in thinking questions of judgment in critical theory.

The interrelations of law and rhetoric, moreover, are constitutively informed by the issue of genre. Like rhetoric, genre theory has frequent recourse to figures of the forensic. This recourse suggests a constitutive relation between questions of judgment and questions of genre. To the extent that genres have to do with typical situations,²¹ with discursive recurrence and expectations, genres constitute occasions of judgment with varying and variable stakes. Judgment, therefore, should not be construed as the prerogative of the judicial.²² Nevertheless, while judgment need not be adjudgement, forensic figures do continue to work as privileged examples of judging in general, in theory.

For Lyotard, the *différend* is that instance which constitutes a victim and allows of no redress—

it is in the nature of a victim not to be able to prove that one has been done a wrong. A plaintiff is someone who has incurred damages and who disposes of the means to prove it. One becomes a victim if one loses these means.²³

Here we recall that the explicit stakes of Lyotard's text include the intention

to refute the prejudice anchored in the reader by centuries of humanism and of 'human sciences' that there is 'man', that there is 'language', that the former makes use of the latter for his own ends ...²⁴

He later asserts that 'reality is always the plaintiff's responsibility'.²⁵ Such an assertion, however, engages not only the language of law, but also the presumptions of rhetoric. How is Lyotard to marry his antivoluntarist subject with a concern for rhetoric, where rhetoric as 'the faculty of observing in any given case the available means of persuasion'²⁶ construes the orator as purposive and language as instrumental?

Briefly, he negotiates this tension metaleptically, by a) situating the question of the *différend* in the first instance in terms of *phrases* in dispute and b) construing suasive intent as a function of a determinate and determining *genre of discourse*—hence, for instance, his assertion that

[w]e believe that we want to persuade, to seduce, to convince, to be upright, to cause to believe, or to cause to question, but this is because a genre of discourse, whether dialectical, erotic, didactic, ethical, rhetorical, or 'ironic', imposes its mode of linking onto 'our' phrase and onto 'us'.²⁷

Lyotard's antivoluntarist subject, then, is reduced to performing phrases whose concatenation is determined by a genre of discourse of which she is an almost epiphenomenal effect.

The distinction between phrase regimens and genres of discourse is required to do significant work in Lyotard's *Différend*. However, unlike his distinction between damages (resulting 'from an injury which is inflicted upon the rules of a genre of discourse but which is reparable according to those rules')²⁸ and wrongs (resulting 'from the fact that the rules of the genre of discourse by which one judges are not those of the judged genre or genres of discourse'),²⁹ that which he draws between regimens of phrases and genres of discourse is somewhat problematic. At times, the distinction appears to be an operatively useful one, as when a genre of discourse is described as a supraphrastic entity, positioned in a determining relation to phrase regimens.³⁰ At other times, however, the genre of discourse/phrase regimen distinction appears to be abandoned, conflated, or rendered impertinent.³¹ At

still other times, phrase regimens are described in terms reminiscent of Austinian speech act theory, which effectively unsettles the genre of discourse as teleological locus.³² Compounding the confusion is Lyotard's talk of phrases as belonging to 'heterogeneous families',³³ for the position of these *families* in relation to Lyotard's genres of discourse is not clarified.

What is clear, however, is that Lyotard's focus risks fixing the subject within a single phrase regimen held responsible for her constitution as victim—the regimen, that is, within which the wrong is perceived to have occurred. *It is in the nature of a victim not to be able to prove that one has been done a wrong.* In this sense, Argentine society is victimised—already wronged by endemic corruption, it is affronted yet again by the effective impunity of the defendant in this case. This issue can be described, but only partly I will suggest, in terms of Lyotard's *différend*: the genre of the trial at work in the *caso Belsunce*, with its interrogative and assertoric phrase regimens, prevents society's claims (about systemic corruption, injustice, impunity) from being formulated, let alone from being heard.

A *rhetorical postulate of genre*, on the other hand, lets us read the case more comprehensively. If we construe our rhetorical subjects (an indignant Argentine society and its spokespersons or advocates, the Argentine press) as purposive agents,³⁴ subjects in multiple contexts, enabled and constrained by a range of genres but with some continuity, intentional agents formed in generic heterogeneity,³⁵ desiring rhetors with a history,³⁶ then we can read the *caso Belsunce* as indicative of both the imbrications of judgment and genre in general, and of the compensation cooption³⁷ affords occasionally.

— 5.

'But', asks Lyotard, 'what proof do we have that there is a principle of compensation between genres of discourse?'³⁸ A formalisable principle of compensation appears to be excluded within the logic of the *différend*. A rhetorical postulate of genre, however, lets us read the *caso Belsunce* not as the enactment of any such principle, but as an example of generic translation, a contingent instance in which one genre is taken up by another, in which a *rhetorical* compensation is sought, in which a juridical determination is read—is judged—in journalistic genres in the terms of a murder mystery.

To be clear, this rhetorical postulate of genre presumes a rhetorical subjectivity which, while nonsovereign, stands in contradistinction to Lyotard's antivoluntarist subject, in that it is intentional and desiring, an agency with degrees of intergeneric continuity, an intra-temporal identity or memory. For such a subject, the incompatibility of genres of discourse posited by Lyotard³⁹ is not always or irrevocably problematic, as the subject as victim is not entirely constrained to the phrase regimen under which she was wronged and might, on occasion, have purposive recourse to a range of genres.

If such a subject as victim is not restricted to the genre of the victimising *différend*, then the fact that ‘the justice which the victim calls upon against the justice of the tribunal cannot be uttered in the genre of juridical or forensic discourse’⁴⁰ is not necessarily problematic. While the Lyotardian *différend* offers a genetic account of victimisation which presumes the persistence of the victimising wrong, its insistence on an antivoluntarist subject precludes it from considering the ways in which a wrong may be said to persist, and, coextensively, the rhetorical means by which this wrong might be attenuated, if not redressed.

Victimisation in this case works metaleptically: for the public prosecutor in the courtroom trial, the principle victim is María Marta; more broadly, however, an initial wrong done to this victim (her murder) makes possible further wrongs done in her name (the scandalous conduct of the trial, its lack of convictions), and is the occasion for further victimisation (Argentine society wronged by this miscarriage of justice).⁴¹ Unlike María Marta the homicide victim, however, this other class of victims (Argentine society, its indignant press) is neither defined by nor constrained to judicial genres. The fact of these victims’ being neither dead nor confined to the judicial allows them to voice their grievances, albeit (or, rather, necessarily) in another genre.

Wronged in one genre (the trial of Carrascosa), the victim (outraged Argentine society, its journalists) seeks solace in another (the *caso Belsunce* as murder mystery recounted in the press). It is not that the victim is reconstituted as plaintiff; rather, an oratorial focus shifts, a different audience is assembled and addressed and a different rhetoric wins the day—a court of public opinion emerges in the press, and the *caso Belsunce* articulates a structure of feeling (discourses of social decadence, inequality, injustice, impunity) at work in Argentina today.

— 6.

The inaccessibility of court documents limits us to the reporting of the *caso Belsunce* in the press. Another reason for this focus, however, is that the case is constituted in the journalistic uptake of the judicial genre; while the judicial proceedings are a condition of its possibility, the case effectively takes place in the press. It is here that the acceptions of *caso* (case) emerge in relation to literary murder mystery, juridical and journalistic genres. The proper name *María Marta*, likewise, does different work in different places—while for juridical purposes it denotes the deceased in an unresolved homicide trial, in the Argentine imaginary *María Marta* articulates, metonymically, a structure of feeling constructing and constraining Argentine identity today. ‘Phrases from heterogeneous regimens or genres’, notes Lyotard, “encounter” each other in proper names, in worlds determined by networks of names.’⁴²

While short on analytic rigour, Williams’ notion of a ‘structure of feeling’ complements our rhetorical postulate of genre, for this operative assumption allows us to refer to the

experiential, to construe subjects as both situated and subsisting, generically emergent but belonging to and existing in a range of genres, historical and desiring, rhetors with both a prospective outlook and a past.⁴³

— 7.

One temptation in identifying the popular trial as a particular discursive genre is to confirm the negative connotations of the topos of ‘trial by media’,⁴⁴ a figure which risks subsuming the general category of judgment by the specific one of juridical adjudgement. This subsumption reads judgment in general as the prerogative of the courts, effectively divesting extra-legal, and especially journalistic genres of judging roles.

However, if talk of genre in general engages issues of judgment, then the figure of ‘trial by media’ can be used differently, as the *caso Belsunce* demonstrates. While the ‘trial by media’ topos (with its allusions to the incommensurable exigencies, stakes and demands of juridical and journalistic genres) is often used to legitimise judgment as the prerogative of the courts, the *caso Belsunce* puts this figure to other use. Rather than a travesty of a judicial verdict, the uptake of the judicial in the press constitutes a generically different instance of judgment with generically different expectations and stakes—the uptake, then, of one genre by another: the journalistic reads the judicial and, in so doing, both affirms and attenuates the wrongs occasioned by a *différend*.

— 8.

Like Argentine news coverage generally, the reporting of trials in Argentina is informed by a widespread lack of faith in legislative, policing and juridical instances. The *caso Belsunce* is exemplary in this respect. While analogies impose themselves between María Marta’s death and the murder mystery genre, the judicial development of the case borders on farce. The competence of most juridical personae has been questioned, with judges and advocates alike impeached. Although María Marta’s husband, Carrascosa, was in fact temporarily detained, the presiding judge, Diego Barroetaveña, promptly disregarded directives from the Court of Appeal, and not only released Carrascosa on bail but also scandalously dismissed the public prosecutor, Molina Pico, from the case. The Supreme Court of Buenos Aires, in turn, has ordered an inquiry into the propriety of Barroetaveña’s handling of the case. At present, Carrascosa is free and the trial stifled by legal wrangling.

Begun by the medical confirmation of the family’s accident hypothesis,⁴⁵ this wrong was continued by the family’s preventing an intervention by the police,⁴⁶ by their scandalous erasure of forensic evidence,⁴⁷ by the falsification of María Marta’s death certificate⁴⁸ and by the questionable dismissal of the public prosecutor from the case. It is perpetuated today by

the case's lack of convictions. Faced with such a manifest miscarriage of justice, Argentinians became victims, yet again, of a generic *différend*, divested of any right of reply within a judicial forum, on judicial terms. 'It is in the nature of a victim', says Lyotard, 'not to be able to prove that one has been done a wrong'.⁴⁹

— 9.

'[W]hat proof do we have', asks Lyotard, 'that there is a principle of compensation between genres of discourse?'⁵⁰ No righting of *wrongs* can really take place within Lyotard's regime of phrases in dispute—only *damages* incurred are subject to reparation, for wrongs involve disparities between judging and judged discursive genres, whereas damages presume generic univocity. Lyotard's subject as (wronged) victim, then, is accorded no compensation as she finds herself restricted to the genre of the victimising *différend*. A rhetorical postulate of genre, however, positing a purposive speaking subject with a past, lets us read the *caso Belsunce* differently. Argentine society and its dissenting press have been wronged time and again in a range of discursive genres. To concede multiple instances of wrongs, however, is to acknowledge a (victimised) subject's temporal continuity, and it is this continuity which enables a compensatory uptake of one genre by another. In the *caso Belsunce*, the victimised press reinscribes the juridical in the genre of the murder mystery, which functions here as an idiom able to bear witness, albeit obliquely, to the *différend* by which Argentine society is positioned as victim.

— 10.

How, then, is the *caso Belsunce* construed as murder mystery and to what ends? Thematically, a murder mystery might require an unidentified murderer and a murder victim (María Marta); that more or less silent witness, the victim's corpse (María Marta); a violent disruption of order (María Marta's brutal death); a cloistered, hermetic environment (the Carmel Country);⁵¹ a tight circle of suspects (María Marta's family, members of the gated community); multiple potential motives and leads,⁵² an effort to catch the perpetrator and thereby re-establish order and a quest for resolution invoking figures of truth and justice, a particularly resonant topos in Argentina (the aborted charging of Carrascosa, the judicial peripeteia involving the public prosecutor and the judge, etc.).

Formally, procedural constraints and commercial imperatives ensure the case's periodicity. This periodic coverage effects a suspenseful serialisation, engaging the *roman-feuilleton*'s rhythms of concealment and discovery. Stylistically, a murder mystery aesthetic permeates reporting of the case—in an article entitled 'Someone Call Agatha Christie, Quick!', for example, it is noted that '*something smells rotten at the Carmel Country, as though a pile of rubbish has been swept under its plush carpets ...*'⁵³ Rhetorically, both the press and the case's protagonists make

comparisons with exemplary murder mysteries to secure the case's generic uptake. Thus *Clarín* reports that

[i]n his prosecution, Molina Pico, describing how María Marta's cadaver had been prepared for the funeral, wrote that 'One inevitably recalls the *The Godfather*, and the mafioso Don Corleone's demanding that the mortician prepare the cadaver of his machine-gunned son'.⁵⁴

More broadly, the affair is persistently related to earlier Argentine cases couched in terms of murder mystery, evoking particular features or protocols associated with the murder mystery genre (an appeal, for instance, to the 'one missing detail' or link).⁵⁵ This interplay even extends to the media's modelling appropriate reader response—thus, *El País* reports that the then Argentine president, Eduardo Duhalde,

characterized the case relating to the murder of María Marta García Belsunce as 'fascinating', and admitted to feeling 'shocked and surprised' by the turns taken in the investigation into the sociologist's death on 27 October last year. 'Of course I'm keeping up with it. Like most of us, I'm following the case all the time', acknowledged the President.⁵⁶

Other rhetorical moves to secure the reading of the case as murder mystery include figuring the investigative journalist as detective hero⁵⁷ and exploiting the topos of reality/fiction. Note, moreover, that the coverage of this case forms part of a broader Argentine discursive trend—a novelising of the criminal in which investigative journalism turns to writing books through recourse to murder mystery.

— 11.

But why the *caso Belsunce* over other tales of kidnapping, rape and murder or disappeared persons gracing the crime pages⁵⁸ of Argentine papers today? The appeal of the *caso Belsunce* lies both in its *kairos*⁵⁹ and its capacious exemplarity. Coming at a time of political crisis in Argentina,⁶⁰ it presents a range of sociocultural concerns—the judicial trial offers a condensing of wrongs, while its journalistic reinscription as murder mystery provides an occasion by means of which Argentine society as victim seeks some rhetorical recompense.

Hence the appeal to the murder mystery, a genre traditionally connoting a righting of wrongs, a conservative restitution of order and equilibrium. In its figures of the justice-maker, the murder mystery offers instances of judgment operating outside the law. The *caso Belsunce*, then, figures the judicial as yet another suspect protagonist. The generic devices of the murder mystery give the wronged and silenced victims (Argentine society) an occasion to judge the juridical, to seek rhetorical compensation in an extrajudicial genre.

However, a judging of more than the juridical is at stake in the *caso Belsunce*, as it articulates a generalised discontent. It is not the blood alone which is stunning, nor the family's story of the accident, nor the falsified death certificate, nor the wealth and exclusivity of a gated community, nor mention of disappeared children,⁶¹ nor speculation about crimes of (hetero- and homosexual) passion,⁶² nor a pubic hair on a sofa, nor the contaminated crime scene, nor Carrascosa's politico-military connections, nor talk of Mexican drug cartels and money laundering, nor the conflation of cops and robbers, nor the questions asked of the judiciary, nor the spectre of criminal impunity; taken together, however, these topics articulate a structure of social discontent, an experience of the present,⁶³ and the *caso Belsunce* affords an occasion for voicing these concerns.

— 12.

How, though, is the *caso Belsunce* to be read as murder mystery when it lacks key conventional criteria standardly used to define the genre? Instead of a single protagonist, the *persona* of the detective is distributed among judges, magistrates, prosecutors, journalists and even persons accused; errors, rather than occasioning the murderer's perdition, act as a generative principle of the tale⁶⁴ and, critically, there is no narrative resolution, no climactic drawing room scene.⁶⁵

This very lack of resolution, however, is reinscribed in relation to the Argentine media's recourse to murder mystery. Thus Astrid Pikielny resituates the *caso Belsunce* within

the long line of unresolved cases which have occurred only in the last few years of democratic restoration ... the attacks against the Israeli Embassy and the AMIA, the death of Alfredo Yabrán, the death of Carlos Menem junior, the mafiosi of the Triple Frontera, the deaths associated with the Armas case, the explosion of Río Tercero and the bribery and corruption scandal ... are only some of the threads of this novel which has no end.⁶⁶

Further indicative of the rhetorical work done by the *caso Belsunce* as murder mystery are the metacommentaries that its coverage has occasioned in the press. Battista, for example, used a series of fictional dialogues relating the Belsunce case to classic murder mysteries as a vehicle for incisive social critique.⁶⁷ Ultimately, the point is the rhetorical one of ongoing, processual uptake: what constitutes a murder mystery is that which is taken up as such.⁶⁸

The absence of 'key' structural criteria thus impedes neither the case's working as a murder mystery nor its articulating, thereby, a structure of feeling at work in Argentina today. Beyond formalist concerns and the constraints of a particular phrase regimen, the *caso Belsunce* is a journalistic reinscription of the juridical in terms of a murder mystery which gives a

victimised society an idiom of witness, of judgment, and affords it, thereby, some rhetorical recompense.

— 13.

This talk of recompense, of judicial and mediatic advocates, concerns regimes of representation—as Freadman reminds us, within a Peircean conception of semeiosis, an attorney (as representamen) *represents* her client's stories (the object) in view of obtaining a particular outcome (the interpretant).⁶⁹

It is a rhetorical postulate of genre, then, with something akin to a Peircean take on signification as dynamic event, which allows us to tell stories of uptake in general, and of the uptakes of the *caso Belsunce* in particular. As mentioned, Lyotard's conception of the victim as wronged subject occasioned by a *différend* goes some way to accounting for the emergence of injustices, just as the logic of the *différend* allows for some apprehension of reception as constitutive of meaning, as when, for instance, Lyotard effectively identifies the autonymic transformation of phrases as having to do with uptake.⁷⁰ However, the *différend*'s static construal of genre and antivoluntarist postulate of subjectivity, which practically reduces the subject to an epiphenomenal effect of the constraints of a particular genre of discourse,⁷¹ limit the range of stories able to be told, such that Lyotard is unable to account for much of the work of uptake in practice, unable to talk to cooption and *détournement*.⁷²

A Peircean take on representation, on the other hand, in which to represent is

[t]o stand for, that is, to be in such a relation to another that for certain purposes it is treated by some mind as if it were that other. Thus a spokesman, deputy, attorney, agent, vicar, diagram, symptom, counter, description, concept, premiss, testimony, all represent something else, in their several ways, to minds who consider them in that way,⁷³

is compatible with a rhetorical postulate of genre, and expands the range of stories able to be told, for such a capacious construal allows us to talk of rhetorical agents making purposive appeals to the varying resources of genre, turning a tale to try to secure a particular uptake (here, representing the *caso Belsunce* with a view to determining some rhetorical recompense).

While the logic of Lyotard's *différend* precludes talk of compensation, that of a rhetorical postulate of genre reads the occasion of cooption as affording a compensation of sorts—a rhetorical compensation which, without reviving a sovereign subjectivity, lets us talk, once again, of judgment and agential intent.

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1. I draw mainly on articles from the online versions of the Argentine daily newspapers, *Clarín*, *la Nación* and *Página 12*. All translations are my own.
 2. Reading Lyotard in relation to aesthetics might involve construing the aesthetic as coextensive with the political, or as offering the terms in which the problem of judgment is most radically articulated (see David Carroll, 'Rephrasing the Political with Kant and Lyotard: From Aesthetic to Political Judgments', *Diacritics*, vol. 14, no. 3, pp. 73–88), for example, or characterising Lyotard as against an aestheticising of the political and for a politicising of the aesthetic, for instance.
 3. Jean-François Lyotard, *The Differend: Phrases in Dispute*, Georges Van Den Abbeele (trans.), University of Minneapolis, University of Minnesota Press, 1988, p. xi. Unless otherwise stated, all further references to Lyotard are to *The Differend*.
 4. See Lyotard's account (Jean-François Lyotard and Georges Van Den Abbeele, 'Interview: Jean-François Lyotard', *Diacritics*, vol. 14, no. 3, 1984, p. 17) of his adoption and rejection of Wittgenstein's figure of 'language games'—accounting for what's gained by moving from a game model to one of phrases, Lyotard notes that '[t]he answer to this question is given in *Le différend* ... it seemed to me that "language games" implied players that made use of language like a toolbox, thus repeating the constant arrogance of Western anthropocentrism. "Phrases" came to say that the so-called players were on the contrary situated by phrases in the universes those phrases present, "before" any intention. Intention is itself a phrase, which doubles the phrase it inhabits, and which doubles or redoubles the addresser of that phrase.' *Pace* Lyotard, figures of instrumentality and intention need not sort with those of mastery.
 5. Lyotard, 'Interview', p. 17.
 6. Carroll, p. 77.
 7. Carroll, p. 78.
 8. See Jean-François Lyotard, *Instructions paiennes*, Editions Galilée, Paris, 1977, p. 47: 'we are always in the hands of some narrative or other: someone has always already said something to us, and we have already been spoken' (translation in Anne Barron, 'Lyotard and the Problem of Justice' in Andrew Benjamin (ed.), *Judging Lyotard*, Routledge, London and New York, pp. 26–42).
- While language certainly precedes individual speech, I contend here that 'we' have not always already been spoken, not in all ways, not all the time, and that a processual situating provides 'us', rhetorically, with some tactical *marge de manoeuvre*. While the genres of discourse are indeed strategies of no one (Lyotard, *Differend*, p. 137), this very lack of categorical belonging allows them, in principle, to be taken up by all: what we will call a *rhetorical postulate of genre* affords a way to account for occasions of generic translation and its effects.
9. *Murder mystery* is taken here as a loose generic set whose species include, for example, the classic English murder mystery and North American hardboiled detective novels.
 10. *Clarín*, 'Caso Belsunce: una decisión favorece al viudo de María Marta', 30 July 2004, <<http://www.clarin.com/diario/2004/07/30/politicales/g-05601.htm>>. In spite of more recent oral proceedings against Carrascosa, accused of homicide, and eight family and non-family members accused of concealment (see Roland Barbano, 'El marido de María Marta va a juicio oral acusado de homicidio', *Clarín*, 7 September 2005, <<http://www.clarin.com/diario/2005/09/07/politicales/g-1047914.htm>>), no convictions have been recorded to date.
 11. On the 1998 *caso Yabrán* and the Argentine senate corruption scandal of 2000, see Hugo Hortiguera, 'Imposturas de la ficción', *Studies in Latin American Popular Culture*, vol. 24, 2005, pp. 101–26.
 12. This appeal to Raymond Williams's (*Marxism and Literature*, S. Lukes (ed.), Oxford University Press, Oxford and New York, 1977) notion of a 'structure of feeling' is intended to signal a recurrent discursive articulation of pressing social concerns, not some grand collective consciousness.
 13. Robert Hariman, *Popular Trials: Rhetoric, Mass Media and the Law*, The University of Alabama Press, Alabama, 1990, p. 1.
 14. Hariman, p. 5. For publicly popular trials as a popular object of research at present, see Richard K. Sherwin, *When Law Goes Pop: the Vanishing Line Between Law and Popular Culture*, University of Chicago Press, Chicago, 2000. See also, for example, Simon Schama, *Dead Certainties: Unwarranted Speculations*, Knopf, New York,

- 1991, on the Webster murder trial which similarly received extensive press coverage in terms of the (newly emerging) genre of detective fiction. For the spectacularisation of the late nineteenth-century criminal trial and the role of the 'yellow' press generally in 'enhancing [its] dramatic potential', see Lindsay Farmer, 'Whose Trial? Comments on *A Theory of Trial, Law & Social Inquiry*, vol. 28, 2003, pp. 547–52.
15. Kenneth Burke, 'Literature as Equipment for Living', in Kenneth Burke, *The Philosophy of Literary Form: Studies in Symbolic Action*, University of California Press, Berkeley, 1973, pp. 293–304.
 16. Anne Freadman, 'The Invention of Genre', *The Canadian Review of Comparative Literature* (forthcoming). While historically rooted in Western aesthetics, this conception of genre does not restrict its field of operation to literary history. See also K. Arens, 'When Comparative Literature Becomes Cultural Studies: Teaching Cultures through Genre', *The Comparatist*, vol. 29, 2005, p. 128, for example, who describes genre as 'not just an aesthetic form but also the enactment of communication in a particular situation, a set of meanings transacted within a horizon of expectation for communication, part of a group's social contract.'
 17. Lyotard, p. xi.
 18. See, for example, Stanley Fish, *There's No Such Thing as Free Speech*, Oxford University Press, New York and Oxford, 1994.
 19. Marianne Constable, 'Reflections on Law as a Profession of Words', in B.G.A. Sarat (ed.), *Justice & Power in Sociolegal Research*, Northwestern University Press, Evanston, Ill., 1998, pp. 19–35.
 20. For Perelman's paradigm of legal disputation and his argumentative project, see C. Perelman and L. Olbrechts-Tyteca, *The New Rhetoric: A Treatise on Argumentation*, Notre Dame University, Notre Dame, IN, 1960. For a critique of this reduction, see Eugenia N. Zimmerman, 'On Definition and Rhetorical Genre', in Aviva Freedman and Peter Medway (eds), *Genre and the New Rhetoric*, Taylor & Francis, London, 1994, pp. 125–32.
 21. See M.M. Bakhtin, *Speech Genres and Other Late Essays*, trans. M. Holquist, University of Texas Press, Austin, 1986, p. 87.
 22. Rather, judgment is taken as a critical component of expectations emergent in relation to particular performances. As per a Kantian perspective of human rationality, the centrality of judgment is acknowledged, but emerges partly as a function of the apprehension of generic constraints.
 23. Lyotard, p. 8.
 24. Lyotard, p. xiii.
 25. Lyotard, p. 8.
 26. Aristotle, *Rhetoric*, The University of Chicago Press, Chicago, 1952, p. 1356a26.
 27. Lyotard, p. 136.
 28. Lyotard, p. xi.
 29. Lyotard, p. xi.
 30. See Lyotard, pp. xii, 29, 128.
 31. See Lyotard, pp. xii, 29, 30.
 32. See Lyotard, pp. 31, 48, 84, and *passim*. For J.L. Austin's speech act theory, see *How To Do Things With Words*, Oxford University Press, Oxford, 1962.
 33. Lyotard, p. 49.
 34. Purposive, but non-sovereign. On the fantasy of the sovereign subject, cf. Judith Butler, *Excitable Speech: A Politics of the Performative*, Routledge, New York and London, Routledge, 1997.
 35. On multiple belonging and generic heterogeneity, see Bakhtin. Cf. also Jerome Bruner's (*Acts of Meaning*, Harvard University Press, Cambridge, 1990) cognitive psychological self apprehension as both 'situated' and 'distributed'.
 36. Alternately, this rhetorical agency could be described spatially as constituted by its multiple margins, its participation in various and varying neighbourhoods. See Anne Freadman, 'The Culture Peddlers', *Postcolonial Studies*, vol. 4, no. 3, 2001, pp. 275–95.
 37. On cooption and on iterability as its condition of possibility, see Butler and Jacques Derrida, *Limited Inc*, Northwestern University Press, Evanston, Ill., 1988 respectively.
 38. Lyotard, p. 30.
 39. For Lyotard, neither rules for linking nor a generalised end are known between one genre and another (p. 30), genres of discourse are heterogeneous and teleological (p. xiv), there exist successes deemed proper to individual genres (p. 129).
 40. Lyotard, p. 30.
 41. This multiplicity of victims finds other resonances in the coverage of the case. Referring to María Marta's fraudulently obtained death certificate, Horacio Cecchi ('Las dos muertes de María Marta', *Página/12*, 12 December 2002, <<http://www.pagina12web.com.ar/diario/sociedad/3-14095-2002-12-12.html>>) notes that '[w]hile it might recur as a fictional device, in reality, dying twice is, by definition, impossible. The two dark deaths of María Marta García Belsunce seem to put the lie to such certainty.'
 42. Lyotard, p. 29.
 43. See Raymond Williams in S. Lukes (ed.), *Marxism and literature*, Oxford University Press, Oxford and New York, 1977.

44. See, for example, Barry Brummett 'Mediating the Laws: Popular Trials and the Mass Media' in Hariman, pp. 179–93.
45. Summoned by the Belsunce family, Dr Juan Ramón Gauvry Gordon was quick to endorse the family's accident hypothesis. Summoned by a neighbour, Dr Santiago Biasi proved more reticent.
46. Horacio García Belsunce, journalist and brother of María Marta, contacted Commissioner Casafús to prevent any police intervention at the Carmel Country.
47. Cleaning up after the accident, Johnny Hurtig, María Marta's stepbrother, found a small metallic object. Determining it to be a 'connector rod' used in shelving, the family had Horacio flush it down the toilet. This connector rod was later revealed to be the remains of one of six bullets fired at María Marta. Similarly, Dr Juan Ramón Gauvry Gordon had María Marta's masseuse clean the bloodied bathroom prior to any forensic scrutiny; on Monday 28 October hundreds of mourners processed through the house, contaminating the crime scene.
48. Although unable to organise a hasty cremation, María Marta's brother-in-law, Guillermo Bártoli, did obtain a death certificate later shown to be fraudulent in several respects.
49. Lyotard, p. 8.
50. Lyotard, p. 30.
51. 'Country' denotes a peripheral, gated community characterised by its exclusivity. This setting for the *caso Belsunce* imposes insular analogies, as Vicente Battista ('María Marta: el relato del crimen', *Clarín*, 16 January 2003, <<http://old.clarin.com/diario/2003/01/16/o-01701.htm>>) notes: 'Ten Little Indians takes place on an island as off-limits to strangers as is the "Carmel Country". In *Ten Little Indians*, the murderer by necessity has to be one of the few inhabitants of the island. Everything would seem to indicate that the murderer of María Marta García Belsunce is likewise to be found among the inhabitants of the Country.'
52. Press speculation has included talk of theft, crimes of hetero- and homosexual passion, mafia payback, drug trafficking, money laundering, dubious financial dealings and police, judicial and political corruption.
53. *El País* (Uruguay), 'Urgente: llamen a Agatha Christie', 14 January 2003, <<http://www.elpais.com.uy/>>. This aesthetic permeates the coverage of the case.
54. *Clarín*, 'Algunas expresiones que costaron muy caro', 26 April 2004, <<http://old.clarin.com/diario/2004/04/24/g-05615.htm>>.
55. By signalling similarity and difference, this appeal subverts some common structural assumptions about genre.
56. *El País* (Uruguay), 'El "asesinato del country" intriga a toda Argentina', 8 January 2003, <<http://www.elpais.com.uy/>>.
57. The conflation of the investigative journalist and the detective hero is personified by Enrique 'El Turco' Sdrech, whose deductions are foregrounded in the reporting of this case. *El País* (Uruguay) ('Urgente'), for instance, notes that 'in one of his televised programs Sdrech interviewed Oscar Sierco, an executive at Casa Sierra. Sierco said that being able to choose between various models of casket, Bártoli opted for the cheapest one. From that he inferred that the family intended to cremate the cadaver, for which purposes an expensive casket would have been a waste of money. Sdrech took the inference one step further. If the family intended to cremate the cadaver, that would amount to the Perfect Crime ...' Having become synonymous with the reporting of criminal cases in different media over more than fifty years, Sdrech connotes pure murder mystery in Argentina. Among other positions, he was for many years editor in chief of the crime rubric of *Clarín*.
58. The reporting of the *caso Belsunce* under a range of rubrics, from 'society' to 'politics' to 'national' to 'general information' to 'crime', attests to its sociodiscursive effects.
59. On *kairos* as opportune timing to which the rhetor actively contributes, see C.R. Miller, 'Kairos in the rhetoric of science', in S.P. Witte, N. Nakadate and R.D. Cherry (eds), *Rhetoric of Doing: Essays on Written Discourse in Honor of James L. Kinneavy*, Southern Illinois University Press, Carbondale, 1992, pp. 312–13, where *kairos* 'appears as a critical occasion for decision or action ... an occasion that is objectively presented or divinely ordained ... a passing instant when an opening appears which must be driven through with force if success is to be achieved'.
60. Recall the succession of five presidents in 2001 which reflected and engendered further sociopolitical instability.
61. Cf. *Página/12*, 'De señora paqueta a activista', 12 December 2002, <<http://www.pagina12web.com.ar/diario/sociedad/subnotas/14095-5650-2002-12-12.html>>.
62. *El País* (Uruguay), 'Urgente': 'Another possible motivation for the crime was passion ... [this] line of investigation was pursued, with no evidentiary support, to the point where it was suggested that María Marta maintained a lesbian relation with a neighbour.'

63. Williams, *Marxism and Literature*, p. 128: 'If the social is always past, in the sense that it is always formed, we have indeed to find other terms for the undeniable experience of the present: not only the temporal present, the realisation of this and this instant, but the specificity of present being, the inalienably physical, within which we may indeed discern and acknowledge institutions, formations, positions, but not always as fixed products, defining products.'
64. Cf. Battista ('María Marta: el relato del crimen'): 'in most cases the murderer commits an error, and that error leads to her perdition. In the crime of María Marta García Belsunce, however, the errors are unrelenting, but rather than identifying the guilty party they only seem to further muddy things.'
65. Cf. Carlos Prieto, 'Un final al que no se llegó por casualidad', *Clarín*, 24 April 2004, <<http://old.clarin.com/diario/2004/04/24/g-05704.htm>>: 'it seems likely that the investigation into the murder of María Marta García Belsunce won't lead to any convictions. This hopeless state was hardly arrived at by accident ...'
66. Astrid Pikielny ('Los diarios y la realidad: la novela argentina', *La Nación*, 28 March 2004, <http://www1.lanacion.com.ar/Archivo/IndexSeccion.asp?publicacion_id=11326&categoria_id=421>.
67. Published in *Clarín*, this series was collectively titled 'The Country Crime: in the Hunter's Sights' ('*El crimen de country: La Mira del cazador*').
68. Cf., for instance, Nelson Goodman's noting (*Ways of Worldmaking*, The Harvester Press, Sussex, 1978, p. 66) regarding contextual constraints that 'a thing may function as a work of art at some times and not at others.' Demonstrating the importance of examples, histories of uptake in practice indicate the inadequacies of structuralist responses to such questions as 'What is a murder mystery?'.
69. Freadman, 'The Culture Peddlers', p. 292.
70. Lyotard initially associates this autonymisation (31) with the work of citation, its characteristic being that of forcing phrases under the regimen of cognitives. Note that Lyotard's talk of *validation* (69) amounts to a concern with normative uptake.
71. Cf. Lyotard, p. 136.
72. Cf. Michel de Certeau, *The Practice of Everyday Life*, University of California Press, Berkeley, 1984.
73. C.S. Peirce, *The Collected Papers of Charles Sanders Peirce*, The Belknap Press of Harvard University Press, Cambridge, Massachusetts, 1978 [2.273], p. 155.